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March 5, 2019

Via Electronic Filing

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

**Re: Beulah Solar, LLC – Request for Modification of an Interconnection
Agreement with South Carolina Electric & Gas Company
Docket Number 2018-401-E**

Dear Ms. Boyd:

Enclosed for filing in connection with the above-referenced matter, please find *South Carolina Electric & Gas Company's Motion to Compel*.

By copy of this letter, we are serving the Motion to Compel upon the parties of record and attach a certificate of service to that effect.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'J. Ashley Cooper'.

J. Ashley Cooper

JAC:hmp

Enclosure

cc: (Via Electronic Mail and First Class Mail)
Richard L. Whitt

BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
DOCKET NO. 2018-401-E

IN RE:)	
)	
Beulah Solar, LLC - Request for)	
Modification of an Interconnection)	
Agreement with South Carolina Electric &)	
Gas Company)	
)	South Carolina Electric & Gas
)	Company's Motion to Compel
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South Carolina Electric & Gas Company ("SCE&G"), pursuant to S.C. Code Ann. Regs. § 103-829(A), § 103-833, and the South Carolina Rules of Civil Procedure, petitions the Public Service Commission of South Carolina ("Commission") for an Order compelling Beulah Solar, LLC's ("Beulah") response to SCE&G's First Set of Discovery Requests (the "Discovery Responses"). Despite initiating this proceeding, Beulah now fails to meaningfully participate in discovery and must be compelled by this Commission to comply with the applicable rules and cease its pattern of avoidance and delay. In accordance with Rule 37 of SCRPC, SCE&G seeks recovery from Beulah of its reasonable expenses incurred in filing this Motion to Compel. Pursuant to S.C. Code Ann. Regs. § 103-829(B), SCE&G requests expedited consideration of this Motion in advance of any hearing in this Docket and at the Commission's earliest convenience.

RELEVANT BACKGROUND

On December 28, 2018, Beulah initiated the instant dispute by filing a Motion to Maintain Status Quo and a Request for Modification in the above-referenced docket. SCE&G moved to

intervene in the proceedings and filed its Oppositions to the Motion and Request on January 7, 2019. In the Oppositions, SCE&G argued, among other things, that to grant Beulah an indefinite stay and extension of applicable Milestone payment deadlines contained in the interconnection agreement (“Beulah IA”) due to purported regulatory uncertainty would result in a cascading effect of stall by other solar developers, freezing solar development in South Carolina. As predicted, on January 24, 2019, Eastover Solar, LLC (“Eastover Solar”) (together with Beulah, “Solar Developers”) filed essentially the same two demands in Docket No. 2019-51-E relating to Eastover Solar’s interconnection agreement with SCE&G (“Eastover IA”) (together with the Beulah IA, the “IAs”). The dockets were later consolidated.

Solar Developers each failed to make their respective Milestone Payment 1 pursuant to their interconnection agreements with SCE&G. Both IAs therefore terminated by their terms and both entities have been removed from the interconnection queue.

In order to understand the basis of Solar Developers’ claims, SCE&G filed its First Set of Discovery Requests as to Beulah on February 5, 2019 (“First Beulah Requests”), its First Set of Discovery Requests as to Eastover Solar on February 12, 2019 (“First Eastover Requests”), and its Second Set of Discovery Requests as to Beulah on February 18, 2019 (“Second Beulah Requests”) (together, the “Discovery Requests”). Pursuant to applicable Commission Regulations, the responses to the Interrogatories and Requests for Production of Documents contained in the First Beulah Requests were due on February 25, 2019 and, the deadline for responses to the Requests for Admission in the First Beulah Requests was March 7, 2019; however, Beulah filed its responses and objections to the Requests for Admission in the First Beulah Requests on February 25, 2019. The responses to the Interrogatories and Requests for Production of Documents contained in the First Eastover Requests are due on March 4, 2019, while the responses to the Requests for Admission in the First Eastover Requests are due on

March 14, 2019. The responses to the Interrogatories and Requests for Production of Documents contained in the Second Beulah Requests are due on March 11, 2019, while the responses to the Requests for Admission in the Second Beulah Requests are due on March 20, 2019.

Instead of abiding by Beulah's obligations to meaningfully participate in discovery, Solar Developers instead filed a Motion to Hold the Docket in Abeyance on February 21, 2019, and then filed a Motion for Protective Order on February 22, 2019, seeking to stay their responses to SCE&G's discovery and otherwise prevent this matter from proceeding. As set forth in SCE&G's recently filed Oppositions to the Motion for Abeyance and Protective Order requests, Solar Developers ignore SCE&G's need to explore Solar Developers' claims and further develop other issues related to this matter, such as Solar Developers' requests that the terminated IAs should now be revived.

On February 25, 2019, Beulah produced its purported responses to the First Beulah Requests. The Discovery Responses are attached hereto as Exhibit A and incorporated herein by reference. The Discovery Responses initially referenced the Motion to Hold Docket in Abeyance and Motion for Protective Order and objected to the First Beulah Requests based on the filing of these Motions. Beulah did not cite to any Commission Order granting the relief sought in the Motion to Hold Docket in Abeyance or Motion for Protective Order because no such order exists.¹ Following lengthy General Objections, Beulah specifically responded to the Discovery Requests as follows:

As to the Requests for Admission

- Beulah either objected to or did not properly admit or deny all 13 Requests for Admission, including Requests for Admission 6-8 and 10-13.

As to the Interrogatories

¹ For the reasons set forth in SCE&G's Oppositions to the Abeyance and Protective Order requests, incorporated herein, discovery should not be stayed and a protective order barring discovery is unwarranted.

- Beulah provided a substantive response, albeit minimal, to **only 6 of the 21 Interrogatories**;
 - As to Interrogatories 1, 3, and 4, identifying persons with knowledge and purported damages, Beulah only stated that it was collecting information in response;
 - The remaining interrogatories, seeking identification of similar projects that Beulah and its affiliates have been involved in where the interconnection agreement contained the now complained of “curtailment language,” information about Beulah’s argument it has encountered difficulty obtaining financing, and Beulah’s efforts to seek extension of the deadlines of the Beulah IA, as well as other topics relevant to this dispute, **went completely unanswered** based upon specious objections.

As to the Requests for Production

- Beulah **failed to produce any documents** in response to the Requests for Production;
- Beulah lodged false objections or otherwise failed to properly respond to every Request for Production and only promised to produce documents in response to Request for Production Number 5.
 - As with the unanswered Interrogatories, SCE&G’s Requests for Production seek relevant information to this dispute, including information that purports to support Beulah’s claim it has had difficulty securing financing and the ability of Beulah and its affiliates to operate under similar curtailment language in other interconnection agreements.

On February 27, 2019, SCE&G sent a deficiency letter outlining the areas of insufficiency in Beulah’s Response and offered the opportunity to meet and confer on the discovery dispute.² A copy of this letter is attached hereto as Exhibit B and incorporated herein. At the time of filing of this Motion, SCE&G has not received any response to its deficiency letter. Beulah’s failure to properly respond to SCE&G’s First Beulah Requests is improper, and complete responses should be compelled by this Commission.

ARGUMENT

² As an added courtesy, counsel for SCE&G placed a call to counsel for Solar Developers on March 4, 2019, as a follow up to the deficiency letter. As of the date of this filing, however, there has been no progress on or resolution of this discovery matter.

Rule 26(b) of the South Carolina Rules of Civil Procedure permits a broad range of discovery. *See* Rule 26(b) SCRCP; *see also* S.C. Code Ann. Regs. §103-833 (“[a]ny material relevant to the subject matter involved in the pending proceeding may be discovered...”) “The rules of discovery were designed to promote full examination of all relevant facts and issues...” *Kramer v. Kramer*, 323 S.C. 312, 472 S.E.2d 215 (Ct. App. 1996). “Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” *City of Columbia v. ACLU*, 323 S.C. 384, 475 S.E.747, 749 (1996).

Pursuant to Rule 37(a), if a party fails to produce as requested under Rule 34 or respond to interrogatories as required under Rule 33, the requesting party may move for an order compelling compliance. Rule 37(a)(2), SCRCP. When such a motion is granted, the Commission shall, upon a finding that the opposing party’s noncompliance was not substantially justified, and after affording an opportunity to be heard, require the noncomplying party or attorney, or both, to pay moving party’s reasonable expenses incurred in making the motion, including attorneys’ fees. Rule 37(a)(4), SCRCP.

The Discovery Requests seek material relevant to the subject matter involved in the proceeding, is permitted under the rules and must responded to in full. The Discovery Requests seek the following categories of information:

- Information pertaining to individuals with knowledge concerning the dispute;
- Information regarding purported damages claimed by Solar Developers;
- Information and communications concerning the IAs and the Milestone Payments;
- Information and communications regarding financing or funding for the respective projects;
- Issues related to curtailment;

- Information related to similar interconnection projects involving Solar Developers, their affiliates, and/or their “upstream owners”—a defined term used by Solar Developers in FERC filings.

It is Solar Developers who have put these issues in dispute. Solar Developers initiated this dispute by filing the Motions to Maintain Status Quo and Requests for Modification of their respective IAs. While Solar Developers purport to base these filings on a pending stakeholder process that may impact curtailment procedures in solar development, additional issues are at stake in this litigation, including their request that the now terminated IAs should be revived in the future. Solar Developers allege that the curtailment language of the IA prevents fundraising to allow for the payment of Milestone Payment 1. *See e.g.*, Beulah’s Motion to Maintain Status Quo at P.2. SCE&G is entitled to explore facts related to these issues, including Solar Developers’ involvement in solar projects with interconnection agreements containing similar curtailment language and their ability to secure funding for those projects, Solar Developer’s communications with investors as to the projects in this dispute, and Solar Developers’ financial position to enable it to complete solar projects contemplated by the now terminated IAs.

Aside from relevancy objections, Beulah refused to answer the Discovery Requests based on specious objections of ambiguity or undefined terms. For example, SCE&G proffered the following Requests for Admissions (RFAs):

- Admit that Cypress Creek is, or was at one time, an upstream owner of Beulah.
- Admit that Cypress Creek was an upstream owner of Ganymede when Ganymede signed an interconnection agreement with SCE&G.
- Admit that Cypress Creek was an upstream owner of Huntley Solar when Huntley signed an interconnection agreement with SCE&G.
- Admit that Cypress Creek was an upstream owner of Palmetto Plains when Palmetto Plains signed an interconnection agreement with SCE&G.

Beulah refused to answer these RFAs on the grounds that “upstream owner” is undefined. Yet, that term is taken directly from the Federal Energy Regulatory Commission’s (FERC) Form 556 that each of these projects was required to complete and submit to the FERC. Moreover, FERC provided an explanation of this term. Any objection based upon a purported inability to understand this term is disingenuous. As noted above, these questions are important to establishing that the common, upstream owner/operator of Beulah signed other IAs with SCE&G containing similar curtailment provisions and was able to secure financing or at least make the required Milestone Payments.

Beulah repeated its objections as to purported ambiguity and harassment throughout its Responses. As demonstrated above, SCE&G’s questions are clearly not ambiguous or “boilerplate,” and answering these questions, or discovery in general, is not unduly burdensome. It may be inconvenient for Solar Developers, but it is hardly harassing.

As noted above, the rules governing discovery define discoverable information broadly. *See City of Columbia*, 475 S.E. at 749 (information must only be relevant to the pending action). SCE&G clearly seeks information tailored to this dispute, and such discovery should be compelled. Given the urgency of this matter and the fact that the ability to conduct discovery should not wait until the May 2 2019, hearing scheduled in this matter, SCE&G asks for expedited consideration of this Motion.

CONCLUSION

For the reasons stated above, the Motion to Compel should be granted and SCE&G awarded its reasonable expenses in connection with this Motion. Pursuant to S.C. Code Ann. Regs. § 103-829(B), SCE&G requests expedited consideration of this Motion in advance of any hearing in this Docket and at the Commission’s earliest convenience.

Respectfully Submitted,

/s/ J. Ashley Cooper
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Matthew W. Gissendanner, Esquire
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***Attorneys for South Carolina Electric &
Gas Company***

Cayce, South Carolina
March 5, 2019

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PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
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This is to certify that I, Ashley Cooper, have this day caused to be served upon the person named below the ***South Carolina Electric & Gas Company's Motion to Compel*** by electronic mail and by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

(via email: rlwhitt@austinrogerspa.com)
 Richard L. Whitt
 Austin & Rogers, P.A.
 508 Hampton Street, Suite 300
 Columbia, South Carolina 29201

/s/ J. Ashley Cooper

This 5th day of March, 2019